

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Santosh Prakash	Team: Squad #8	CCRB Case #: 201708455	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 10/08/2017 3:30 AM	Location of Incident: Bowery and East 4th Street	Precinct: 09	18 Mo. SOL 4/8/2019	EO SOL 4/8/2019	
Date/Time CV Reported Sun, 10/08/2017 3:42 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 10/12/2017 11:16 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Louis Guglielmo	00489	930285	009 PCT
2. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. LT James Lee	00000	930421	009 PCT
2. POM Michael Novellino	14234	950960	009 PCT
3. POF Danielle Venuto	04556	957255	009 PCT
4. POM Christia Menoni	07576	939019	009 PCT
5. DT3 Kadia Saunders	4486	946222	009 DET

Officer(s)	Allegation	Investigator Recommendation
A.SGT Louis Guglielmo	Abuse: Sergeant Louis Guglielmo stopped § 87(2)(b)	
B.SGT Louis Guglielmo	Abuse: Sergeant Louis Guglielmo arrested § 87(2)(b)	
C. An officer	Abuse: An officer threatened to arrest individuals.	

### Case Summary

On October 8, 2017, 3:30 am, at the corner of East 4<sup>th</sup> Street and Bowery in Manhattan, § 87(2)(b) was stopped by Sgt. Louis Guglielmo (9<sup>th</sup> Precinct Anti-Crime) in regards to an ongoing robbery investigation. **(Allegation A: Abuse of Authority – Stop:** § 87(2)(g) During the course of the stop, Sgt. Guglielmo arrested § 87(2)(b) for § 87(2)(a) 160.50 **(Allegation B: Abuse of Authority – Arrest:** § 87(2)(g) Allegedly, an officer involved with the encounter threatened to arrest bystanders at the scene. **(Allegation C: Abuse of Authority – Threat of Arrest:** § 87(2)(g) § 87(2)(b) was removed to the 9<sup>th</sup> Precinct stationhouse and ultimately released with a § 87(2)(a) 160.50

There is cell phone video footage of the incident (BR03-BR07).

### Findings and Recommendations

**Allegation A: Sergeant Louis Guglielmo stopped** § 87(2)(b)

**Allegation B: Sergeant Louis Guglielmo arrested** § 87(2)(b)

The following facts are undisputed. On October 8, 2017, at approximately 3:30 am, Sgt. Guglielmo approached and engaged § 87(2)(b) at the corner of East 4<sup>th</sup> Street and Bowery, believing that he resembled an individual wanted for questioning in regards to a recent string of robberies in the 9<sup>th</sup> Precinct. At some point, things escalated and § 87(2)(b) was arrested for § 87(2)(a) 160.50. He was removed to the stationhouse and ultimately released with a disorderly conduct summons. Sgt. Guglielmo acknowledged that it was his decision to first approach § 87(2)(b) to eventually arrest him, and to later release him with the summons.

At issue is whether Sgt. Guglielmo's actions were justified at the outset of the encounter, and if the subsequent arrest was lawful.

§ 87(2)(b) is a § 87(2)(b). On the night of the incident, he was wearing a black dress shirt, black pants, and a white colored head article known as a bucket hat (see embedded below).

§ 87(2)(b)

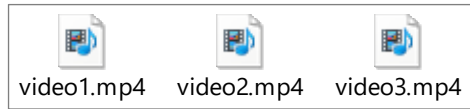


§ 87(2)(b) testified as follows. At the time of the incident, his friend § 87(2)(b) and two other friends were standing at the corner, speaking with a group of strangers they just happened to meet. § 87(2)(b) a musician, was soon prompted to put on an impromptu solo hip-hop performance and proceeded to rap for several minutes. The show quickly attracted a small crowd of pedestrians, mostly passerbys leaving bars in the area. Soon after concluding his set, § 87(2)(b) decided to leave the scene. But as he began to do so, he noticed several men, holstered and in plainclothes, approaching him from across the street. Guessing that they were police officers about to disperse the crowd, § 87(2)(b) turned around and attempted to walk away in the opposite direction, but was cut off by Sgt. Guglielmo, who immediately requested his identification. When § 87(2)(b) asked if he did anything wrong, Sgt. Guglielmo said: “Why did you walk away as soon as we got out of the car?” As the other officers encircled him, Sgt. Guglielmo then asked him again for identification. § 87(2)(b) refused at first but eventually provided his identification. He was then questioned for several minutes by an officer identified as Lt. James Lee, who asked him: where he lived; what he was doing in the area; if he had an arrest record; whether he had marijuana on him; and who else he knew there. Then referring to the only other black male on the corner – a stranger who had just complimented § 87(2)(b) on his performance – Lt. Lee asked if the two knew each other. (BR01)

§ 87(2)(b) said no and initially answered Lt. Lee’s questions candidly and told him who he was with and what they had been doing. But after about five minutes of repetitive questioning, § 87(2)(b) stopped responding – he felt his rights were being violated. Up to this point, § 87(2)(b) had not interacted with anybody around him. But soon after he went silent, the other black male approached him unexpectedly to say goodbye. The officers were still around him and Sgt. Guglielmo and Lt. Lee were telling § 87(2)(b) that he had to answer their questions. But the male stepped through, shook hands with § 87(2)(b) (nothing was exchanged) and asked him for his Instagram username. § 87(2)(b) told him and the man left the scene without interacting with the officers. However, the interruption somehow shifted the tone of the encounter and as the man walked away, Sgt. Guglielmo told § 87(2)(b) that he was under arrest. When § 87(2)(b) asked why and stepped back, the officers moved in and restrained § 87(2)(b) by grabbing his forearms. § 87(2)(b) reacted by pulling away and tried to wriggle out of their hold, but he was quickly taken down to the ground and handcuffed. § 87(2)(b) acknowledged that he continued moving around, but denied struggling violently at any point. (BR01)

As his friends, along with others in the crowd, loudly objected to the officers’ actions, § 87(2)(b) was removed to the 9<sup>th</sup> precinct stationhouse and lodged in a cell. Sgt. Guglielmo eventually came by and advised that he had been stopped because he resembled the perpetrator of recent robberies in the area – that the suspect was of the same build and wore a bucket hat like his. He was released approximately three hours later with a § 87(2)(a) 160.50. (BR01)

The investigation interviewed § 87(2)(b) one of § 87(2)(b)’s three friends present at the scene. Her account of the incident was largely consistent with § 87(2)(b)’s. (BR02) § 87(2)(b) also submitted video footage she captured on her cell phone, the relevant segments of which are embedded below. (See same files at: BR03-BR07)



Video 1 shows § 87(2)(b) standing with Lt. Lee. It is unclear what if anything is being said; what part of the encounter this corresponds to is also unclear. Video 2 and Video 3 show the officers attempting to handcuff § 87(2)(b) and the brief struggle that ensues. Video footage submitted by other bystanders (BR15-BR16) at the scene show the same action recorded in Video 2 and Video 3. None of the footage in this case directly pertains to the questions in dispute.

Based on the officers' statements and the relevant police documents, the investigation established the following pertinent background facts. In the weeks preceding the incident, the 9<sup>th</sup> Precinct Detective Squad was attempting to identify the perpetrators of several related robberies in the 5<sup>th</sup>, 7<sup>th</sup>, and 9<sup>th</sup> Precincts, several of which had occurred in the general vicinity of the incident location. All of the officers involved in the incident had been apprised of this pattern and collectively testified as follows: that the robberies involved the same modus operandi – the perpetrators would target intoxicated patrons of area bars and, by assaulting victims outside the establishments or by otherwise luring them away, rob them of cash or credit cards, sometimes making victims withdraw funds from ATMs under threat of force; that several wanted posters had been disseminated showing photographs of the perpetrators, the images extracted from video surveillance footage retrieved from cameras at the respective incident locations; and that while the perpetrators' facial features were not clearly visible in any of these posters, one of them had appeared in multiple posters – a black male wearing a bucket hat. (BR09-BR13)

The investigation obtained the Squad's records on the robberies in question and determined that wanted posters had been generated in regards to three separate cases: 1.) Complaint No. 4684, a September 16, 2017 robbery at Bowery and East 3<sup>rd</sup> Street; 2.) Complaint No. 4638, a September 17, 2017 robbery at East 1 Street and Bowery; and 3.) Complaint No. 4840, a September 29, 2017 robbery at East 13<sup>th</sup> Street and 3<sup>rd</sup> Avenue. The wanted poster images for the September 16 and September 17 robberies (see embedded on the following page) do not feature an individual wearing a bucket hat and the associated DD5s do not make any reference to such a description. (BR17-BR18) However, the third case – a robbery most recent to the incident date (October 8<sup>th</sup>) – involved two black male perpetrators, one of whom was shown to be wearing a bucket hat in two wanted posters (see embedded, next page). (BR19)

Det. Kadia Saunders, the investigator assigned to the September 29 robbery, testified that she generated and distributed the wanted poster after the victim identified the two recorded males as the perpetrators. But because the victim was unable to provide sufficient descriptions, and because the image quality was so poor, Det. Saunders was unable to establish what the perpetrators looked like beyond their race and gender (black males) and the visible bucket hat. As such, she never transmitted any descriptive information for the two suspects, via the wanted posters or through other channels. (BR14)

§ 87(2)(b)



*Wanted Posters for September 16 and September 17, 2017 robberies*

§ 87(2)(b)



**Narrative**

THE 9TH PRECINCT DETECTIVE SQUAD IS ATTEMPTING TO IDENTIFY THE TWO MALES PICTURED ABOVE WHO IS WANTED FOR ROBBERY. ON 9/29/2017 AT APPROXIMATELY 0200 HRS C/V WAS STRUCK BY UNKNOWN PERSON TO SIDE OF HEAD AND FACE. C/V FELL TO THE GROUND WHILE SUBJECTS REMOVE HIS CREDIT CARDS AND \$500 USC FROM HIS PERSON. SUBJECTS THEN FLED E/B ON 13 STREET TOWARDS 2ND AVENUE.

*Det. Saunders' Wanted Poster for September 29, 2017 robbery*

§ 87(2)(b)



On October 7, 2017, as logged in her contemporaneous DD5s, Det. Saunders entered a cancellation notice on the wanted flyer, after the apprehension of one of the two males. The individual, § 87(2)(b) confessed to participating in both Det. Saunders' case as well as the September 17 robbery. Per Det. Saunders, § 87(2)(b), with § 87(2)(b) hair (see embedded above) – identified himself as wearing the bucket hat in her wanted poster. As stated previously, the images in Complaint No. 4840 neither show nor refer to a bucket hat; the associated UF-61 specifically notes that the suspects' height, weight, clothing, and headwear were unknown. For unknown reasons, the wanted flyers in No. 4840 were canceled on September 20, 2017.

At the time of the stop, none of the involved officers were aware that Det. Saunders' wanted poster had been cancelled or that an arrest had been made. (BR09-BR13)

Sgt. Guglielmo acknowledged that he initiated the encounter and testified to the following sequence of events. While driving down Bowery on Anti-Crime patrol, already on the lookout for the wanted suspects, he happened to notice § 87(2)(b) on the corner of East Fourth Street and Bowery because: he was wearing a bucket hat similar to the one he had seen in the wanted posters; he was standing next to an extremely tall black male who happened to resemble another individual on the wanted posters; and both men were each engaging two small groups of pedestrians in a manner that "looked a little odd." Sgt. Guglielmo appeared for his CCRB interview with copies of the posters in Complaint No. 4638 and No. 4684, and stated that they depicted a male wearing a bucket hat. Sgt. Guglielmo said there were additional photos of the individual from the same case, as well as another photo from a separate incident showing a male wearing a white bucket hat (he did not know if they corresponded to the same individual). The robberies seemed to be coordinated by a crew of about six black males, ranging in height from 5'8" to 6'3" tall, in their 20s to 30s, each with varying facial features. While he had been given more detailed descriptions regarding the men, and had this information at the time of the stop, he did not recall what they were at the time of his interview. As such, Sgt. Guglielmo could not elaborate on what the individual with the bucket hat looked like, especially because the black and white photographs were "grainy." Sgt. Guglielmo acknowledged that he observed no indication of criminal activity at the time of his approach. But he said that the way in which the two men were positioned with respect to their groups was unusual, because it "looked like they were selling people [...] something" – that "you could tell they weren't part of the group." Sgt. Guglielmo believed this was consistent with how the other robberies had progressed, because the perpetrators were known to approach bar patrons, offer drugs for sale "around the corner," and ambush them there. (BR09)

Directing PO Menoni's attention to the scene, the officers pulled over and approached the corner on foot, intending to simply question § 87(2)(b) and obtain further information. But as Sgt. Guglielmo neared the corner, § 87(2)(b) appeared to notice him and immediately turned around to walk approximately five to ten feet in the opposite direction down East 4<sup>th</sup> Street, at which time Sgt. Guglielmo said "stop, police!" § 87(2)(b) complied. The tall male "backed away" but did not move a significant distance and stayed at the corner. Sgt. Guglielmo stated that he was acting, at this point in time, under his common-law right of inquiry and that § 87(2)(b) was free to walk away if he wanted to.



total number of bystanders at the corner and did not recall whether § 87(2)(b) s yelling was directed at the crowd – as incitement – or if it was towards the officers. § 87(2)(b) was cursing but PO Novellino did not recall what profanity was used. (BR10)

PO Menoni and the other officers were generally consistent with Sgt. Guglielmo’s statements, but for one point. PO Danielle Venuto, who arrived at the corner with Lt. Lee and PO Novellino soon after Sgt. Guglielmo, stated that one of the officers handed her § 87(2)(b) s identification card early on in the encounter and asked her to conduct some checks on a Departmental phone. PO Venuto went back to her vehicle to retrieve her phone but when she returned to the corner the officers and § 87(2)(b) were already in a physical struggle, prompting her to focus her attention on the surrounding crowd, which (save for a single interjecting female) refrained from getting involved. (BR11)

The officers’ memo book entries regarding the incident were consistent with their statements (BR08, BR23-BR26), as were the TRIs documenting the forcible takedown on § 87(2)(b) (PO Novellino, PO Menoni, and Sgt. Guglielmo each prepared one). (BR27-BR28)

§ 87(2)(a) 160.50

A level-one request for information is a “general, nonthreatening encounter in which an individual is approached for an articulable reason and asked briefly about his or her identity, destination, or reason for being in the area.” “Where the person approached from the content of the officer's questions might reasonably believe that he or she is suspected of some wrongdoing, the officer is no longer merely asking for information. The encounter has become a common-law inquiry that must be supported by founded suspicion that criminality is afoot.” “Flight even in conjunction with equivocal circumstances that might justify a police request for information is insufficient to justify pursuit because an individual has a right "to be let alone" and refuse to respond to police inquiry.” (People v Hollman, 79 NY2d 181; BR29)

A police officer may stop and detain a person in a public place when he entertains a reasonable suspicion that the person has committed, is committing or is about to commit a crime. Reasonable suspicion may not be based on a vague or un-particularized hunch. Nor will innocuous or even equivocal behavior generate a founded suspicion of criminality. Vague or generic descriptions of a suspect which could apply to numerous individuals cannot form the basis of reasonable suspicion. (People v DeBour, 40 N.Y.2d 210; BR30)

Similarity between an individual’s appearance and that of a suspect in a wanted poster will provide reasonable suspicion to effect a stop, particularly when additional factors – such as temporal or spatial proximity to recent crimes – or other indicia of criminality are present. (People v Reed, 106 AD3d 673 [1st Dept 2013]; People v Dent, 94 AD3d 536 [1st Dept 2012]; People v Medina, 66 AD3d 555 [1st Dept 2009]; BR31-BR33)



Under N.Y. Penal Law §240.20(1), a person “is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, engages in fighting or in violent, tumultuous or threatening behavior.” (N.Y. Penal Law, §240.20 (1); BR34) “The phrase ‘tumultuous and violent conduct,’ however, in itself clearly means much more than mere loud noise or ordinary disturbance. It is designed to connote frightening mob behavior involving ominous threats of injury, stone throwing, or other such terrorizing acts.” “Provocative, offensive, and verbally abusive behavior” against an officer – even if “repeated by members of a crowd which form[s] at the scene” – cannot be considered violent or tumultuous on its own. (People v Stephen, 581 N.Y.S.2d 981 [1992]; BR35) Disorderly conduct necessarily entails a public harm element. But the mere presence of onlookers at the scene of a dispute between an officer and a civilian does not warrant an inference of public harm “where there is no evidence that the bystanders expressed any inclination, verbally or otherwise, to involve themselves in the dispute.” (People v Baker, 20 NY3d 354 [2013]; BR36)

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

**Allegation C: An officer threatened to arrest individuals.**

It is undisputed that a crowd gathered at the incident location at the time of § 87(2)(b)'s arrest, or immediately prior to it.

§ 87(2)(b) alleged that as § 87(2)(b) was being arrested, a male officer threatened to arrest those in the crowd, without singling anyone out in particular. § 87(2)(b) stated that when § 87(2)(b) was taken down, a number of people started cursing at the officers out of frustration. As the crowd became vocal, a white male officer instructed everyone to get back and threatened to arrest them if they did not stop cursing, repeating himself several times. § 87(2)(b) was not able to describe this officer, beyond stating that he was one of the two white males involved in the arrest, and definitely not the Asian male. (BR02)

The three white male officers at the scene of the arrest – Sgt. Guglielmo, PO Novellino, and PO Menoni – all denied the allegation. (BR09-BR13)

Lt. Lee (the Asian male) stated that he may have addressed the bystanders as alleged, as a crowd control tactic. However, he did not recall if he actually did so and did not recall any specific interactions with the crowd. (BR12)

§ 87(2)(g)  
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**Civilian and Officer CCRB Histories**

- § 87(2)(b) and § 87(2)(b) have not filed any prior complaints.
- Sgt. Guglielmo has been a member of service for 15 years: he has been a subject in 11 prior cases in 20 allegations, none of which were Substantiated. § 87(2)(g)

**Mediation, Civil and Criminal Histories**

§ 87(2)(b) rejected mediation. Notice of Claim results are pending. § 87(2)(b); §§ 86(1)(3)(4); § 87(2)(b)

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Squad No.: 08

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature                      Print Title & Name                      Date